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DEPARTMENT OF COMMERCE

International Trade Administration

A-580-868

Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: We determine that imports of large residential washers (washers) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act).

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled “Final Determination Margins.”

EFFECTIVE DATE: (Insert date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: David Goldberger or Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

The following events have occurred since the preliminary determination¹ was issued. On August 1, 2012, we issued a supplemental questionnaire to Samsung Electronics Co., Ltd. (Samsung), addressing Whirlpool Corporation's (hereafter, the petitioner's) July 25, 2012, fraud allegation against Samsung, and we received a response to this supplemental questionnaire in this same month. Samsung responded to the petitioner's fraud allegation in August and September, 2012.

In August and October, 2012, LG Electronics Inc. (LG) submitted supplemental questionnaire responses. In addition, in October, Samsung submitted revised sales and cost databases pursuant to the Department's requests.

On August 31, 2012, the petitioner formally filed a request to amend the petition to exclude smaller top-load washers from the scope of this investigation. See General Issue 1 in the "Issues and Decision Memorandum for the Antidumping Duty Investigation of Large Residential Washers from the Republic of Korea" from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Issues and Decision Memorandum), dated concurrently with this notice and incorporated herein by reference.

On September 19, 2012, the petitioner revised its targeted dumping allegation for LG with respect to region. See General Issue 3 in the Issues and Decision Memorandum.

¹ See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Large Residential Washers from the Republic of Korea, 77 FR 46391 (August 3, 2012) (Preliminary Determination).

On October 31, 2012, and November 7, 2012, the petitioner, LG, and Samsung submitted case and rebuttal briefs, respectively. On November 14, 2012, the Department held a hearing at the request of the petitioner, LG, and Samsung.

Period of Investigation

The period of investigation (POI) is October 1, 2010, through September 30, 2011.

Scope of the Investigation

The products covered by this investigation are all large residential washers and certain subassemblies thereof from Korea.

For purposes of this investigation, the term “large residential washers” denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs² designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets³ designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;⁴ (b) a base; and (c) a drive hub;⁵ and (4) any combination of the foregoing subassemblies.

² A “tub” is the part of the washer designed to hold water.

³ A “basket” (sometimes referred to as a “drum”) is the part of the washer designed to hold clothing or other fabrics.

⁴ A “side wrapper” is the cylindrical part of the basket that actually holds the clothing or other fabrics.

⁵ A “drive hub” is the hub at the center of the base that bears the load from the motor.

Excluded from the scope are stacked washer-dryers and commercial washers. The term “stacked washer-dryers” denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term “commercial washer” denotes an automatic clothes washing machine designed for the “pay per use” market meeting either of the following two definitions:

(1) (a) it contains payment system electronics;⁶ (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;⁷ or

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,⁸ the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise

⁶ “Payment system electronics” denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

⁷ A “security fastener” is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a “center pin reject” feature to prevent standard Allen wrenches or Torx drivers from working.

⁸ “Normal operation” refers to the operating mode(s) available to end users (*i.e.*, not a mode designed for testing or repair by a technician).

modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S.

Department of Energy pursuant to 10 CFR § 429.12 and 10 CFR § 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this investigation are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Scope Comments

On May 17, 2012, the petitioner requested that the Department exclude smaller top-load washers (i.e., automatic washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet) from the scope of this investigation, the concurrent antidumping investigation of washers from Mexico, and the concurrent countervailing duty investigation of washers from Korea. Subsequently, we received comments from Samsung and LG objecting to the petitioner's scope exclusion request, and comments from other interested parties supporting the request.

Based on our evaluation of these comments, the briefs which were subsequently filed by LG and the petitioner, and the information provided by U.S. Customs and Border Protection (CBP), we have amended the scope to exclude smaller top-load washers. For a complete discussion of the Department's scope determination, see Memorandum from the Team to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, "Exclusion of Top-Load Washing Machines with a Rated Capacity Less than 3.70 Cubic Feet from the Scope of the Investigations," dated July 27, 2012, and Issues and Decision Memorandum.

LG requested on July 27, 2012, that larger-width washers (i.e., washers with widths of 29 inches or greater) be excluded from the scope of the investigations. The petitioner objected to this request on August 27, 2012. Based on our evaluation of the parties' comments, as discussed in their briefs, we find that larger-width washers should not be excluded from the scope. See Issues and Decision Memorandum) for further discussion.

Application of Facts Available

In the Preliminary Determination, we determined that due to Daewoo Electronic Corporation's (Daewoo's) complete lack of cooperation in this investigation, in accordance with section 776(a)(2) of the Act, the use of facts available was appropriate as the basis for the dumping margin for Daewoo. See Preliminary Determination, 77 FR at 46393. Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides

information that cannot be verified as provided in section 782(i) of the Act.

In this case, Daewoo did not respond to the Department's questionnaire by the established deadline nor did it request an extension of time to submit its response. By failing to participate in this investigation, Daewoo withheld requested information, failed to provide information with the deadlines established, and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, because Daewoo did not participate in this investigation, the Department continues to find that the use of total facts available is warranted.

In the Preliminary Determination, we also determined that the application of an adverse inference to Daewoo was warranted pursuant to section 776(b) of the Act. See Preliminary Determination, 77 FR at 46393. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁹ Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference."¹⁰ For purposes of this final determination, we continue to find that

⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1, at 870 (1994) (SAA), reprinted in 1994 U.S.C.A.N. 4040, 4198-99.

¹⁰ See Antidumping Duties: Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997); see also Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

Daewoo did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act, because it failed to participate in this investigation. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to Daewoo.

The Department's practice, when selecting an adverse facts available (AFA) rate from among the possible sources of information, has been to select the highest rate on the record of the proceeding and to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."¹¹

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned to Daewoo a rate of 82.41 percent, which is the highest rate alleged in the petition (as adjusted at initiation).¹² The Department believes that this rate is sufficiently high as to effectuate the purpose of the facts available rule (i.e., we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act). As discussed below, we have also corroborated this rate, and determined that it is both reliable and relevant.

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. To corroborate

¹¹ See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part, 71 FR 65082, 65084 (November 7, 2006).

¹² See Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations, 77 FR 4007 (January 26, 2012) (Initiation Notice).

secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.¹³ The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published prices lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation and to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this final determination.¹⁴ We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this final determination. During our pre-initiation analysis we examined the key elements of the U.S. price and normal value calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the petition or in supplements to the petition

¹³ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and partial Termination of Administrative Reviews, 62 FR 57391, 57392 (November 6, 1996) (unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997)).

¹⁴ See Antidumping Investigation Initiation Checklist dated January 19, 2012 (Initiation Checklist), at 6 through 11. See also Initiation Notice, 77 FR at 4009 - 4011.

that corroborates key elements of the U.S. price and normal value calculations used in the petition to derive estimated margins.¹⁵

Based on our examination of the information, as discussed in detail in the Initiation Checklist, Initiation Notice, and Preliminary Determination, we consider the petitioner's calculation of the U.S. price and normal value underlying the 82.41 percent rate to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we determine that the 82.41 percent margin in the petition is reliable for purposes of this investigation.

With respect to the relevance aspect of corroboration, as in the Preliminary Determination, we also considered information reasonably at our disposal to determine whether a margin continues to have relevance. We found that the 82.41 percent rate in the petition reflects the commercial practices of the large residential washer industry and, as such, is relevant to Daewoo. In making this determination, we compared the model-specific margins we calculated for LG and Samsung for the POI to the petition rate of 82.41 percent. We found that the highest model-specific margins we calculated for both LG and Samsung in this investigation were higher than or within the range of the 82.41 percent margin alleged in the petition.

Specifically, after calculating the margins for LG and Samsung as discussed below, we examined individual model comparisons and the margins we calculated based on those model comparisons in order to determine whether the rate of 82.41 percent is probative. We found a number of model comparisons with dumping margins above the rate of 82.41 percent, and a

¹⁵ Id.

number of model comparisons with dumping margins within the range of 82.41 percent. Accordingly, we determine that the AFA rate is relevant as applied to Daewoo for this investigation because it falls within the range of model-specific margins we calculated for LG and Samsung in this investigation.¹⁶

Based on the foregoing analysis, we have determined that the AFA rate of 82.41 percent has probative value and is corroborated “to the extent practicable” as provided in section 776(c) of the Act. See also 19 CFR 351.308(d).¹⁷

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

¹⁶ This corroboration methodology is consistent with our past practice. (See Narrow Woven Ribbons With Woven Selvage from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 41808, 41811 (July 19, 2010)). A similar corroboration methodology has been upheld by the Court of Appeals for the Federal Circuit. (See PAM S.p.A. v. United States, 582 F.3d 1336, 1340 (Fed. Cir. 2009)).

¹⁷ See Preliminary Determination, 77 FR at 46394.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the “Margin Calculations” section of the Issues and Decision Memorandum.

Verification

As provided in section 782(i) of the Act, in August and September 2012, we verified the sales and cost information submitted by the respondents for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by the respondents.¹⁸

Targeted Dumping

The Act allows the Department to employ the average-to-transaction comparison methodology under the following circumstances: 1) there is a pattern of export prices (EPs) or constructed export prices (CEPs) for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and 2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. See section 777A(d)(1)(B) of the Act.

¹⁸ See the following memoranda entitled: “Verification of the Cost Response of LG Electronics, Inc. in the Antidumping Duty Investigation of Large Residential Washers from the Republic of Korea,” dated October 11, 2012; “Verification of the Home Market and Export Price Sales Responses of LG Electronics, Inc.,” dated October 11, 2012; “Verification of the CEP Sales Responses of LG Electronics, Inc. and LG Electronics USA Inc.,” dated October 15, 2012; “Verification of Samsung Electronics America Inc. in the Antidumping Duty Investigation of Large Residential Washers from Korea,” dated October 16, 2012; “Verification of the Cost Response of Samsung Electronics Co., Ltd. in the Less-Than-Fair-Value Investigation of Large Residential Washers from the Republic of Korea,” dated October 17, 2012; and “Verification of the Sales Response of Samsung Electronics Co., Ltd. in the Less-Than-Fair-Value Investigation of Large Residential Washers form Korea,” dated October 17, 2012.

For purposes of the final determination, we performed our targeted dumping analysis following the methodology employed in the Preliminary Determination, after making certain revisions to the respondents' reported U.S. sales data based on verification findings, as enumerated in the "Margin Calculations" section of the Issues and Decision Memorandum. In so doing, we found that the results of our final targeted dumping analysis were generally consistent with those of our preliminary targeted dumping analysis. Therefore, we continued to apply the alternative average-to-transaction method for LG's and Samsung's margin calculations in the final determination. See the memoranda entitled "Final Determination Margin Calculation for LG Electronics Inc., and LG Electronics USA, Inc." (collectively, "LG"), and "Final Determination Margin Calculation for Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc." (collectively, "Samsung") dated concurrently with this notice for further discussion.

Continuation of Suspension of Liquidation

Pursuant to 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from Korea, entered, or withdrawn from warehouse, for consumption on or after August 3, 2012, the date of publication of the preliminary determination in the Federal Register. CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown below adjusted, where appropriate, for export subsidies. These instructions suspending liquidation will remain in effect until further notice.

Final Determination Margins

The weighted-average dumping margins are as follows:

<u>Exporter/Manufacturer</u>	<u>Weighted-Average Margin Percentage</u>
Daewoo Electronics Corporation	82.41
LG Electronics, Inc.	13.02
Samsung Electronics Co., Ltd.	9.29
All Others	11.86

In accordance with section 735(c)(5)(A) of the Act, the “All Others” rate is derived exclusive of all de minimis or zero margins and margins based entirely on AFA. We have based our calculation of the “All Others” rate on the weighted-average of the margins calculated for LG and Samsung using publicly-ranged data. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for these respondents.¹⁹ For further discussion of this calculation, see memorandum entitled “Calculation of the All Others Rate for the Final Determination of the Antidumping Duty Investigation of Large Residential Washers from Korea,” dated concurrently with this notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

¹⁹ See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination, 76 FR 41203, 41205 (July 13, 2011).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination. As our final determination is affirmative, the ITC will determine within 45 days whether imports of the subject merchandise are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

December 18, 2012
(Date)

Appendix – Issues in Decision Memorandum

General Issues

1. Scope Exclusion of Smaller Top-Load Washers
2. Request to Exclude Larger-Width Washers from the Scope
3. Targeted Dumping
4. Zeroing in the Average-to-Transaction Method

Company-Specific Issues

LG

5. Rebates
6. Conducting the Sales-Below-Cost Test Based on Level of Trade
7. General and Administrative Expenses
8. Alleged Affiliation of LG and its Input Suppliers
9. Request to Exclude a Certain Home Market Model
10. Unreported Early Payment Discounts
11. Calculation of Profit Rate for Affiliated Logistics Services Provider
12. Treatment of Certain Selling Expenses and Rebates
13. Treatment of Affiliated Retailer's Operating Expenses
14. Adjustment of Marine Insurance Premium Ratio

Samsung

15. Fraud Allegation Against Samsung
16. Request to Apply Adverse Facts Available to Samsung for Its Affiliate's Conduct
17. Alleged Unforeseen Event
18. U.S. Sales Transactions Affected by the Alleged Unforeseen Event
19. Date of Sale for Samsung's Direct Shipment Sales
20. Duty Drawback
21. Adjustment to the Selling, General & Administrative Expenses of Affiliated Suppliers
22. Product Characteristic Coding